

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISAEAL ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO LANDSCAPING,
INC., E.L.M. GENERAL CONSTRUCTION CORP. D/B/A
KELLY'S CREW, JOHN KELLY and JOSEPH
PROVENZANO,

Defendants.

**Case No. 21-cv-09014
(PAE)(SDA)**

**COURT AUTHORIZED
NOTICE OF 29 U.S.C. §
216(b) COLLECTIVE
ACTION**

**IMPORTANT NOTICE
ADVISING YOU OF YOUR
RIGHTS**

TO:

1. Current and former hourly employees who were paid by both Kelco Construction, Inc. ("Kelco") and E.L.M. General Construction Corp. d/b/a Kelly's Crew (ELM) for work performed during the same workweek.
2. Current and former hourly employees of Kelco Construction, Inc. who worked as drivers.
3. All current and former hourly employees of E.L.M. General Construction, Inc.

The lawsuit seeks monetary damages under the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and New York Labor Law for allegedly wages, overtime wages and prevailing wages.

THIS NOTICE is meant to advise you of your right to participate in this lawsuit as a claimant and plaintiff under the Fair Labor Standards Act if you worked at any time from November 2, 2018 to the present.

No determination has been made that you are owed any amount money, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.

Federal law prohibits Defendants from retaliating against you or discriminating against you if you wish to join this lawsuit

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**ASK TO BE INCLUDED**

If you wish to be included, you must complete the form at the end of this Notice.

DO NOTHING

By doing nothing, you will not be included in the portion of the lawsuit relating to claims under the Fair Labor Standards Act.

Your options are explained in this notice. To ask to be included in this lawsuit, you must act before [60 days from date notice is sent out.]

01. Why did I get this notice?

You are getting this notice because Defendants' records show that you work or worked for Defendants at some time from November 2, 2018 to the present.

02. What is this lawsuit about?

This lawsuit is about whether the Defendants properly paid employees in accordance with federal and New York State labor law, and failed to pay prevailing union wages.

This notice involves only the claims under federal law, which are for overtime wages. The Court may, at a later date, authorize you to receive notice involving the New York State labor law and prevailing wage claims.

In the portion of the lawsuit brought under the Fair Labor Standards Act ("FLSA"), the lawsuit alleges that (i) ELM employees who reported to the Defendants' facility at 25 Newton Place in Hauppauge should have been paid from the time they reported to 25 Newton until the time they left 25 Newton at the end of the workday, and were not properly paid for overtime at the correct rate; (ii) Kelco employees who transported other employees in company vehicles should have been paid from the time they arrived at 25 Newton until they left 25 Newton at the end of the workday; (iii) employees who were paid by both Kelco and ELM for work performed in the same workweek were not properly paid overtime wages for all hours worked over 40.

03. What damages is the lawsuit seeking?

The lawsuit is seeking to recover unpaid overtime pay, wages, prevailing wages, prejudgment and post-judgment interest and "liquidated damages," which doubles the amount of wages owed. The lawsuit is also seeking recovery of costs and attorneys' fees.

04. What happens if I join the federal claims?

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable on the federal claims. You will also share in any proceeds from a settlement or a favorable judgment.

By joining, you designate Plaintiffs CARLOS ALVAREZ CHICAS, ALONSO VILLATORO, MISAEL ALEXANDER MARTINEZ CASTRO, ANGEL MARTINEZ, EDWIN ULLOA MOREIRA and MATEO UMAÑA as your representatives, and to the fullest extent possible, you designate Plaintiffs and their counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiffs relating to the lawsuit will be binding on you if you join the lawsuit.

While this lawsuit is pending, as part of the discovery process, you may be asked to provide documents or information relating to your employment with Defendants, which may include responding to written questions or answering questions in person under oath, either before or at trial. For this reason, if you join the lawsuit, you should preserve all documents relating to the Defendants currently in your possession. You also may be asked to sit for a deposition scheduled at your convenience and/or asked to testify at a trial in the Southern District of New York Courthouse.

05. Can Defendants and/or my current employer retaliate or fire me if I join the lawsuit?

No. It is a violation of Federal law for Defendants to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

06. Can I participate in this lawsuit, even though, due to my immigration status, I did not work or am not working for Defendants legally?

Yes, you may participate and recover wages regardless of your immigration status. You will not be asked about your immigration status.

06. Can I participate in this lawsuit, even though my primary language is Spanish?

Yes, you may participate and recover wages even if your primary language is Spanish. The attorneys that represent the plaintiffs speak Spanish and if necessary a translator will be provided for you.

07. How do I ask the Court to include me in the case?

Enclosed is a form called the "Plaintiff Consent Form." **If you choose to join the lawsuit, it is extremely important that you read, sign, and promptly return the Plaintiff Consent Form.**

An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Plaintiff Consent form must be sent to the following address:

MOSER LAW FIRM, PC
5 East Main Street
Huntington, NY 11743

RE: *Alvarez, et al. v. Kelco Construction, Inc., et al.*

The signed Plaintiff Consent Form must be postmarked by (60 days from mailing). If your Plaintiff Consent Form is not postmarked by (60 days from mailing), you may not be able to participate in the federal law portion of this case or share in a monetary damage.

08. Do I have a lawyer in this case?

If you choose to join this lawsuit, you will be represented by Plaintiffs' Counsel: Moser Law Firm, P.C., 5 East Main Street, Huntington, NY 11743. Tel 516-671-1150.

09. Should I get my own lawyer?

You do not need to hire your own lawyer because Plaintiffs' Counsel will be working on your behalf. However, you have a right to hire an attorney of your choice to represent you in this matter. If you are represented by other counsel, you will need to confer with them regarding their costs and fees.

10. How will the lawyers be paid?

You will not be required to pay any out of pocket expense for services provided by Plaintiffs' counsel Moser Law Firm, P.C. If you choose to be represented by Plaintiffs' attorneys, their costs and fees will be paid out of any settlement or money judgment the class receives against Defendants. If there is no settlement or money judgment, Plaintiffs' counsel will not receive any fee. Further information about this Notice, the deadline for joining the lawsuit, the form provided or answers to other questions concerning this lawsuit may be obtained by contacting the Plaintiffs' attorney Steven Moser, Esq., telephone number (516) 671-1150. Any communication with the Moser Law Firm, PC is **privileged and confidential** and will not be disclosed to anyone without your permission.

If you select an attorney other than Plaintiffs' counsel to represent you in this action, you may join this lawsuit by submitting an appropriate consent form directly to the Clerk of Court by the deadline indicated herein.

11. What happens if I do nothing at all?

If you choose to not join this lawsuit, you will not be affected by any settlement or judgment rendered in this case, whether favorable or unfavorable.

12. This notice has been authorized by the court.

This notice and its contents have been authorized by Magistrate Judge Stewart D. Aaron for the Southern District of New York. The Court has not yet ruled on whether Plaintiffs' claims or Defendants' defenses have any merit.

Please do not write or call the court about this notice.

Although the Court has approved the sending of this Notice, the Court expresses no opinion on the merits of the Lawsuit.

CONSENT TO JOIN LAWSUIT

1. I consent to be a party plaintiff in the lawsuit *ALVAREZ, ET AL. V. KELCO CONSTRUCTION, INC. ET AL.*, U.S. District Court, Southern District of New York, Civil Action No. 21-CV-9014 in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate Plaintiffs CARLOS ALVAREZ CHICAS, ALONSO VILLATORO, MISAEL ALEXANDER MARTINEZ CASTRO, ANGEL MARTINEZ, EDWIN ULLOA MOREIRA and MATEO UMAÑA and their counsel, the Moser Law Firm, P.C. ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for reasonable attorneys' fees and expenses should this case settle or a money judgment is received and will receive a proportion of any such gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

Name (printed)

Signature

Date

Street Address

City, State, Zip

Telephone Number

Email

Mail to: MOSER LAW FIRM, P.C.
5 East Main Street
Huntington, NY 11743
Attn: *Alvarez et al. v. Kelco Construction, Inc. et al.*